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TUAN AHN NGUYEN AND JOSEPH BOULAIS,

Petitioners,

v.

IMMIGRATION AND NATURALIZATION SERVICE,

Respondent.

On Writ of Certiorari to the United States Court of Appeals for the Fifth Circuit

BRIEF OF THE NATIONAL WOMEN'S LAW CENTER, ET AL. AS *AMICI CURIAE* IN SUPPORT OF PETITIONERS

(Additional *Amici* Listed On Inside Front Cover)

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INTEREST OF *AMICI CURIAE*

Amici curiae are organizations that have a strong interest in ensuring that all persons receive the equal protection of the law under the Constitution.[1] The concerns of some *amici* focus on equality of opportunity without discrimination based on gender. The work of other *amici* is focused on child support and other issues of concern to families. A description of each of the *amici* is set forth in the Appendix hereto.

SUMMARY OF ARGUMENT

Petitioner Joseph A. Boulais, an American citizen, is the father of Tuan Anh Nguyen, born in Vietnam of a Vietnamese mother. Boulais raised his son in the United States since Nguyen was six, established his biological paternity through DNA testing, and obtained an Order of Parentage from a Texas court. Nevertheless, Boulais was unable to convey his citizenship to his son. The statutory provisions challenged in this case, 8 U.S.C. §§ 1409(a)(3) and (a)(4), require an unwed citizen father, but not an unwed citizen mother, to agree in writing to provide financial support and legitimate, acknowledge, or adjudicate paternity of the child before the child turns 18, in order to convey citizenship to an out-of-wedlock child born abroad. Because Boulais failed to satisfy these statutory requirements – even though he raised and supported his son in the United States – he failed to convey his citizenship to his son.

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[1] The parties' written consents to the filing of this brief have been filed with the Court. No counsel for any party authored this brief in whole or in part, and no person or entity other than the *amici curiae* and their counsel made any monetary contribution to the preparation or submission of this brief.

The challenged provisions, §§ 1409(a)(3) and (a)(4), define the rights of citizen parents to convey citizenship to their children on the basis of gender, and thus are subject to heightened scrutiny. As this Court's precedents establish, for these gender-based provisions to survive heightened scrutiny, the Government must demonstrate "an exceedingly persuasive justification." These provisions must be shown to serve "important governmental objectives" and the means employed must be "substantially related to the achievement of those objectives." The justifications cannot be based on stereotypes of the roles and capacities of men and women, and they cannot be post hoc rationalizations.

These provisions cannot survive heightened scrutiny because they are derived from overbroad, gender-based stereotypes: that unwed mothers, because they give birth, will take responsibility for raising and financially supporting the child, while unwed fathers are likely to be unaware of the birth and will carry out no responsibilities other than those they formally accept or that are imposed by law. To assume that women's role in childbirth always determines which parent actually assumes responsibility after birth is an overbroad generalization, as the facts in this case and an increasing body of research demonstrate.

Although most single parents are mothers, an increasing number of single fathers, including unwed fathers, are raising children. Contrary to the stereotype that unwed fathers are not even aware of their child's birth, many unwed fathers have relationships with their children and their children's mother at the time of the birth. Moreover, not all unwed mothers carry a pregnancy to term with the intent to bear or raise a child. And, while most child support is owed by noncustodial fathers to custodial mothers, in 1998 noncustodial mothers owed nearly $3 billion in child support to custodial fathers.

The legislative history as well as the current structure of § 1409 demonstrates that the provision is based on outmoded stereotypes and laws. The gender-based statutory framework is rooted in the different rights and responsibilities assigned to mothers and fathers of out-of-wedlock children under the common law. Under common law, a mother was solely responsible for nonmarital children, and a mother's right to convey citizenship to her out-of-wedlock child derived from this responsibility. Conversely, under common law, a father had sole authority over his marital children and wife; accordingly, a father conveyed his citizenship to his "legitimate" child. These gender-based distinctions were codified in 1940. In 1986, the specific procedures for conveying citizenship to an out-of-wedlock child through the father were modified to make them easier to administer by the State Department, but the gender-based distinctions flowing from the stereotypes were preserved.

The Government now offers several justifications for these gender-based distinctions, including the argument that they are designed to foster relationships between unmarried fathers and their children and between children of unmarried fathers and the United States. But the legislative history of the immigration and nationality laws shows that, while these objectives were considered in relation to different provisions – a residency requirement for children born abroad to non-citizen fathers in the 1940 Act (since repealed) and a provision governing the issuance of visas, which are limited in number, to non-citizen family members, in the 1986 Act – they do not pertain to § 1409.

The legislative history of the 1986 amendments to § 1409 does refer to the purposes of preventing a child from becoming a public charge and preventing fraud. However, §§ 1409(a)(3) and (a)(4) are not substantially related to these objectives. The requirements in

§§ 1409(a)(3) and (a)(4) are insufficiently related to securing legally enforceable support to provide any meaningful protection against the child's becoming a public charge. For that reason, they also do not provide any meaningful deterrent to the assertion of false claims of paternity in order to confer citizenship. Indeed, the history of the 1986 amendments makes clear that neither § 1409(a)(3) nor (a)(4) was designed to prevent fraudulent claims of paternity; rather, it was § 1409(a)(1), which requires that a blood relationship between a citizen father and his child be established by clear and convincing evidence, that had that purpose.

Section 1409(a)(1) also renders the gender-based §§ 1409(a)(3) and (a)(4) superfluous. Its requirement that paternity be established by "clear and convincing evidence" is sufficient to secure a temporary order of child support and provides the basis for establishing paternity and securing a permanent child support order under the laws of all states. Moreover, this requirement satisfies the governmental objective of preventing fraudulent claims of paternity as well, and can be met at any time, with particular accuracy and administrative ease, by genetic tests.

In sum, because §§ 1409(a)(3) and (a)(4)'s gender-based requirements are based on overbroad stereotypes and are not substantially related to any important government objective, they cannot survive heightened scrutiny.

ARGUMENT

I. THE GENDER-BASED PROVISIONS OF § 1409 ARE SUBJECT TO HEIGHTENED SCRUTINY.

The statutory provision at issue in this case, 8 U.S.C. § 1409, imposes different standards on American

citizen fathers and American citizen mothers for conveying their citizenship to an out-of-wedlock child born abroad.[2] A citizen mother of an out-of-wedlock child automatically confers citizenship on her child at birth, as long as she has met the residency requirement of § 1409(c).

Citizen fathers must meet a residency requirement, *see* 8 U.S.C. § 1401(g), and establish a blood relationship by clear and convincing evidence, *see* 8 U.S.C. § 1409(a)(1). In addition, a citizen father, but not a citizen mother, must agree in writing to provide financial support until the child is 18, *see* 8 U.S.C. § 1409(a)(3), and take the required action to acknowledge or legitimate the child before the child reaches 18 years of age, *see* 8 U.S.C. § 1409(a)(4).

Because § 1409(a) defines the rights of citizen parents to convey citizenship to their children on the basis of gender, it is subject to heightened scrutiny.[3]

As stated by this Court in *United States v. Virginia*, 518 U.S. 515 (1996) ("*VMI*"), "[p]arties who seek to defend gender-based government action must demonstrate 'an exceedingly persuasive justification' for that action." *Id.* at 531, *citing J.E.B. v. Alabama ex rel. T.B.*, 511 U.S. 127, 136-37 & n.6 (1994) and *Mississippi Univ. for Women v. Hogan*, 458 U.S. 718, 724 (1982); *see also Kirchberg v. Feenstra*, 450 U.S. 455, 461 (1981), *citing Personnel Administrator of Mass. v. Feeney*, 442 U.S. 256, 273 (1979). Moreover, "[t]he burden of justification is

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[2] Unlike the situation that led to the decision of a divided court in *Miller v. Albright*, 523 U.S. 420 (1998), the father is a party in this case, placing the gender discrimination issue directly before the Court.

[3] As discussed by petitioners, the fact that the statute at issue is related to immigration law does not mean that it is subject to a lower standard of review.

demanding and it rests entirely on the State." *VMI*, 518 U.S. at 533, *citing Mississippi Univ. for Women v. Hogan*, 458 U.S. at 724. The Government must show that the gender-based provision "serves 'important governmental objectives and that the discriminatory means employed,' are 'substantially related to the achievement of those objectives.' . . . The justification must be genuine, not hypothesized or invented post hoc in response to litigation. And it must not rely on overbroad generalizations about the different talents, capacities, or preferences of males and females." *VMI*, 518 U.S. at 533, *quoting Mississippi Univ. for Women*, 458 U.S. at 724. Moreover, that a "statutory policy discriminates against males rather than against females does not exempt it from scrutiny or reduce the standard of review." *Mississippi Univ. for Women*, 458 U.S. at 723. As the Court pointed out in *Mississippi University* and as is true in this case, even when discrimination is apparently directed at men, it can reflect stereotypes that hurt women as well. *See id.* at 729.

The requirement in § 1409(a)(1) that a citizen father of an out-of-wedlock child establish his blood relationship by clear and convincing evidence is not at issue in this case. This requirement was satisfied by petitioner Boulais, and mothers also must establish a blood relationship under 8 U.S.C. § 1409(c).[4] However, the different requirements imposed on citizen fathers and mothers by the provisions that are at issue, §§ 1409 (a)(3) and (a)(4), fail to meet the heightened scrutiny test established by this Court. The gender classifications in the statute are based on "overbroad generalizations" about the roles and capacities of men and

[4] While a mother will be aware of the birth, establishing maternity of a particular child may require additional evidence where birth records are unavailable or incomplete.

women as parents and outmoded, gender-based common law principles. As recognized by Justice O'Connor, "[i]t is unlikely . . . that any gender classifications based on stereotypes can survive heightened scrutiny." *Miller*, 523 U.S. at 452 (O'Connor, J., concurring). There is no "exceedingly persuasive justification" for these gender-based distinctions as this Court's precedents require, for they are not substantially related to any genuine, important governmental objectives.

II. THE GENDER CLASSIFICATIONS IN §§ 1409 (a)(3) AND (a)(4) ARE BASED ON OVERBROAD STEREOTYPES ABOUT THE ROLES AND CAPACITIES OF MEN AND WOMEN AS PARENTS.

The father in this case, U.S. citizen Joseph Boulais, brought his son, Tuan Anh Nguyen, an out-of-wedlock child of a Vietnamese mother, to the United States when he was six, and raised him. (J.A. at 20-21.) The whereabouts of Nguyen's mother, or even if she is alive, are unknown. *Id.* Boulais also established his biological paternity by "clear and convincing evidence" – a DNA test – and obtained an "Order of Parentage" from a Texas court, as the lower court found. (J.A. at 15-19, 22-29.) Nevertheless, Boulais failed to convey his citizenship to his son because he failed to comply with the requirements of §§ 1409(a)(3) and (a)(4) – agreeing in writing to support his child and taking action to acknowledge paternity or legitimate Nguyen before he turned 18. Contrary to stereotype, Boulais – an unwed father – provided for and raised his son in the United States. However, because he failed to satisfy the statutory requirements prescribed on the basis of the stereotype that an unwed father is uninvolved, he cannot convey citizenship to his son.

Had Boulais been the mother, citizenship would have been conveyed to Nguyen at birth. A U.S. citizen

mother is not required to comply with §§ 1409(a)(3) and (a)(4). Indeed, she would have conveyed citizenship to her child even if she had left him at birth to be raised abroad by a father who was not a U.S. citizen and returned by herself to the United States without any further contact or support.

The Government argued, and the court below concluded, that the additional requirements for conveying citizenship imposed on citizen fathers do not violate equal protection guarantees because they help to ensure reliable proof of a biological relationship and meet "the important governmental objectives of encouraging healthy parent-child relationships while the child is a minor, and fostering ties between the foreign born child and the United States," because the father, unlike the mother, "will not necessarily be present at the birth of the child or even know of the child's existence, making it impossible for the citizen father to develop a healthy relationship with the child." *Nguyen v. INS*, 208 F.3d 528, 535 (5th Cir. 2000). The Government also argued that the requirements would help "ensure that the child will not become a public charge." Respondent's brief below at 35, *Nguyen* (No. 98-60418) [hereinafter Respondent's Br.]. The Government did not explicitly address why the statute did not require mothers to agree to provide support, but did state that mothers "*typically* will have custody of the child immediately after birth." *Id.* at 36 (emphasis added).

The assumptions used to justify the requirements of §§ 1409(a)(3) and (a)(4) that, to convey citizenship, unwed fathers, but not mothers, must, in addition to establishing their biological relationship by clear and convincing evidence, agree to provide support for the child and take some additional action to acknowledge or legitimate the child before the child is 18, are based on the very type of gender-based stereotypes this Court has repeatedly rejected. Unwed mothers, because they give birth, are assumed to

take sole responsibility for raising and financially supporting the child. By contrast, unwed fathers are assumed to carry out no responsibilities other than those they formally accept or that are imposed by law.

To assume that women's role in childbirth always determines which parent actually assumes responsibility post birth is an "overbroad generalization," as the facts in this case and an increasing body of research demonstrate. Such stereotyped assumptions hurt both mothers and fathers.

Both quantitative and qualitative research into the relationships between unwed fathers and their children demonstrate that the stereotypes underlying the requirements of §§ 1409(a)(3) and (a)(4) are unrepresentative of and unfair to many unwed fathers, not only Boulais. Although most single parents are mothers, many unwed fathers are raising their own children. According to the Census Bureau, in 1998 there were 14 million parents raising minor children whose other natural parent did not live with them. More than two million of these custodial parents (15 percent) were fathers, and nearly 400,000 (18 percent) of these custodial fathers have never been married.[5] During the 1980s, the number of custodial fathers grew by 42 percent; during the same

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[5] *See* Timothy Grall, *Child Support for Custodial Mothers and Fathers*, *in* Current Population Reports (U.S. Census Bureau), Oct. 2000, at 1, 2 & Table A (calculations based on census data) [hereinafter *Child Support for Custodial Mothers and Fathers*]. Some additional proportion of custodial fathers may have been unmarried at the time of the birth of their child but may have subsequently married a woman other than the mother; they would be reported as "married" custodial fathers by the Census Bureau, or as "divorced" if they subsequently divorced.

period, the number of custodial mothers grew by only 15 percent.[6]

Empirical research also shows that, contrary to the stereotyped assumptions underlying §§ 1409(a)(3) and (a)(4), many unwed fathers know of their child's birth and, even if they do not become the child's custodial parent, have a relationship with the child and its mother at the time of the birth. Data from a study conducted in several cities across the United States show that 81 percent of the responding unwed mothers stated that the father of their child provided financial help during their pregnancy and three-quarters of mothers stated that the father visited them and their baby in the hospital after the child was born.[7]

Far from being unaware of their child's birth, many unwed fathers are cohabiting with their child's mother at the time of the birth. Between 1990 and 1994, the percentage of out-of-wedlock births to cohabiting but unmarried parents had increased to 39 percent.[8]

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6 *See* Daniel Meyer, *Fathers and the Child Support System*, *in* Child Support: The Next Frontier 94 (J. Thomas Oldham & Marygold S. Melli eds., 2000).

7 *See Dispelling Myths about Unmarried Fathers*, Fragile Families Research Brief (Bendheim-Thomas Center for Research on Child Wellbeing & Social Indicators Survey Center), May 2000, at 2, *available at* http://crcw.princeton.edu/CRCW/papers/researchbrief1.pdf. *See also* Rebekah Levine Coley & P. Lindsay Chase-Lansdale, *Father's Involvement with their Children Over Time*, *in* Poverty Research News, Mar.-Apr. 2000, at 13 (half of all the unwed fathers surveyed were either highly involved with the child at the time of the child's birth or became more involved during the child's pre-school years).

8 *See* Larry Bumpass & Hsien-Hen Lu, *Cohabitation: How the Families of U.S. Children are Changing*, *in* Focus (University of Wisconsin-Madison Institute for Research on Poverty), Spring 2000, at 6; *see also* Sara McLanahan, et al., *Unwed Parents or Fragile*

[Footnote continued on next page]

Furthermore, although having a formal support order increases the likelihood and amount of support provided to a child, this support and involvement can occur in the absence of any formal child support arrangement. According to the Census Bureau, almost half (47.5 percent) of custodial parents without a child support award or agreement received some noncash support from the noncustodial parent.[9]

The stereotype that because women give birth, unmarried mothers will assume responsibility for caring for and supporting the child places a heavy burden of expectation on women, and also is subject to many exceptions. Not all unwed mothers, either in the United States or abroad, carry a pregnancy to term because of an intent to bear or raise a child. Family planning is lacking in many countries, and abortions in particular are not available legally and safely to all unwed citizen women who are abroad.[10] Approximately 76,000 children born to

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[Footnote continued from previous page]
Families': Implications for Welfare and Child Support Policy (Bendheim-Thomas Center for Research on Child Wellbeing), May 15, 2000, at 14, *available at* http://crcw.princeton.edu/crcw/papers/papers.htm (indicating that the cohabitation rate among these fragile families in the late 1990s might be as high as 54 percent).

9 *See Child Support for Custodial Mothers and Fathers*, *supra*, at 5.

10 More than 150 million women abroad desire, but lack, family planning services, and 150,000 women a year abroad die annually because of the lack of family planning services. U.S. Department of State, Bureau of Population, Refugees and Migration, *Reproductive Rights and Reproductive Health* (Feb. 5, 1999), *available at* http://www.state.gov/www/global/prm/fs_reproductive.html; President's Remarks on Legislative Agenda for International Family Planning Assistance, 36 Weekly Comp. Pres. Doc. 765 (Apr. 7, 2000). Furthermore, citizen women who depend on U.S. military hospitals abroad to provide family planning services may not obtain abortions at those hospitals. 10 U.S.C. § 1093(b).

unwed mothers in the United States were relinquished for adoption between 1989 and 1995.[11] And, while § 1409(a)(3) requires only unwed fathers to state that they will provide child support, on the assumption that no parallel requirement for mothers is needed, data show that in 1997, noncustodial mothers owed nearly $3 billion in child support to custodial fathers.[12]

The differing requirements that §§ 1409(a)(3) and (a)(4) impose on citizen mothers and fathers thus are based on overbroad stereotypes about the roles and capacities of mothers and fathers of out-of-wedlock children. Moreover, even when stereotypes are supported by empirical data or represent a generally accurate description of reality, this Court has been clear that they cannot form the basis for legislation when functional, gender-neutral classifications are available. *See e.g.*, *Miller*, 523 U.S. at 460 (Ginsburg, J., dissenting); *VMI*, 518 U.S. 541-44; *Weinberger v. Wiesenfeld*, 420 U.S. 636, 645 (1975). As this Court's precedents emphasize, the constitutional

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[11] Stephanie J. Ventura & Christine A. Bachrach, *Nonmarital Childbearing in the United States, 1940-1999*, *in* National Vital Statistics Reports (Centers for Disease Control), Oct. 18, 2000, at 17 and Anjani Chandra et al., *Adoption, Adoption Seeking, and Relinquishment for Adoption in the United States*, *in* Advance Data (Centers for Disease Control), May 11, 1999, at 9 (calculation based on the number of reported births to unwed mothers between 1989 through 1995 and the percent of those births that were relinquished for adoption). Additionally, more recent data show that 30,800 infants were abandoned in U.S. hospitals in 1998. U.S. Department of Health and Human Services, Administration for Children and Families, *Abandoned Babies – Preliminary National Estimates* (July 19, 2000), *available at* http://www.acf.dhhs.gov/news/stats/abandon.htm.

[12] *Child Support for Custodial Mothers and Fathers*, *supra*, at 4 (custodial fathers were due $2.7 billion of child support and custodial mothers were due $26.4 billion of child support in 1997).

guarantee of equal protection must protect the rights of those who fall outside the stereotype.

III. THE LEGISLATIVE HISTORY OF § 1409 REVEALS THAT THE PROVISION WAS INTENDED TO PRESERVE NOW OUTMODED, GENDER-BASED PRINCIPLES FROM COMMON LAW.

The legislative history as well as the current structure of § 1409 demonstrates that it is based on outmoded stereotypes. The gender-based statutory framework is rooted in the different rights and responsibilities assigned to mothers and fathers of out-of-wedlock children under common law. Under common law, mothers were responsible for nonmarital children, and the mother's right to convey citizenship to her out-of-wedlock child derived from this responsibility. In contrast, common law granted a father authority over his marital children and wife; accordingly, a father conveyed his citizenship to his "legitimate" child. Even before the citizenship statutes explicitly addressed the conveyance of citizenship to out-of-wedlock children, U.S. State Department practice reflected these discriminatory principles. Section 205 of the Nationality Act of 1940, ch. 876, 54 Stat. 1137, 1139-40 (1940), the predecessor of § 1409, was intended to codify this gender-based practice concerning citizenship of nonmarital children. In 1986, the statute was amended; the specific procedures for conveying citizenship to an out-of-wedlock child through the father, codified as § 1409 since 1952, were modified to make them easier to administer by the State Department, but the gender-based stereotypes about unwed fathers and mothers, dating back to common law, were preserved and reinforced.

The Government now offers several justifications for these gender-based distinctions, including the argument that they are designed to foster relationships between

unmarried fathers and their children and between children of unmarried fathers and the United States. But the legislative history shows that these objectives were not considered in relation to § 1409, but in connection with very different provisions of the law. Thus, as to § 1409, these relationship objectives are post hoc rationalizations. The legislative history of the 1986 amendments to § 1409 does refer to the purposes of preventing fraud and preventing a child from becoming a public charge. However, the gender-based approach of § 1409 continues to be based on overbroad stereotypes, and is not substantially related to these objectives. *See* Section IV *infra*.

A. The Provision Was Intended to Reinforce the Discriminatory and Discredited Assignment of Gender Roles with Respect to Out-of-Wedlock Children Under Common Law.

Under the common law of coverture, married fathers had legal authority over their wives and children. *See, e.g., Jackson v. Jackson*, 8 Or. 402, 403 (1880) ("By the common law, a father has the paramount right to the care and custody of his minor children, unless it be shown that he is a man of grossly immoral principles or habits, or that he has not the ability to provide for them, or that they have been ill-used by him."); *State v. Paine*, 23 Tenn. 523, 1843 WL 1898, at *8 (1843) (recognizing that under common law, "women and children . . . have been [held] as the property of the husband and father, and having no will

of their own, no rights in contradiction to his power and authority. . . ."). [13]

The corollary of the rules of coverture was that fathers had no responsibility for their out-of-wedlock children unless they chose to legitimate them; nonmarital children were the sole responsibility of their mothers. [14]

Under the English common law, a child born out of wedlock was "nullius filius, the son of no one," and neither parent had an obligation to support that child. *Friesner v. Symonds*, 20 A. 257, 259 (N.J. Prerog. Ct. 1890); *State v. Tieman*, 73 P. 375, 376 (Wash. 1903). However, in the United States, "the law, from a very early day, has recognized the mother of a bastard as its natural guardian, and as such has imposed upon her the duty of its maintenance, and given her a right to its custody, and to its services." *Friesner*, 20 A. at 259. Therefore, courts held that it was "well settled that the mother of an illegitimate child has a right to the custody and control of the child as against the putative father, and is bound to maintain it as its natural guardian." *Town of Hudson v. Hills*, 8 N.H. 417, 1836 WL 1290, at *2 (1836). Thus, "the mother of an illegitimate child is, at common law, under the primary duty to support it." *Easley v. Gordon*, 51 Mo. App. 637, 1892 WL 1668, at *2 (1892). In the late 19th and early 20th centuries, it was well established in most American jurisdictions that, in the absence of a statute, the father was under no legal obligation to support his illegitimate child. *See, e.g., Glidden v. Nelson*, 15 Ill. App. 297, 1884 WL

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[13] *See generally*, Kristin Collins, Note, *When Fathers' Rights Are Mothers' Duties: The Failure of Equal Protection in Miller v. Albright*, 109 Yale L.J. 1669, 1680-93 (2000) [hereinafter Collins].

[14] This rule reinforced coverture's basic principle of patrilineal property and status transmission in marriage. Collins, 109 Yale L.J. at 1687.

10141, at *2 (1884), *Beckett v. State ex rel. Rothert*, 30 N.E. 536 (Ind. App. 1892).

Early citizenship law and practice followed these distinct, but equally gender-biased, common law traditions. Consistent with the rules of coverture, for many years the citizenship statutes allowed citizenship to be conveyed only by married citizen fathers, not by married citizen mothers. *See generally Miller v. Albright,* 523 U.S. at 460-71 (Ginsburg, J., dissenting). Prior to 1940, the citizenship statutes did not explicitly address the situation of out-of-wedlock children of U.S. citizen parents.[15] However, consistent with common law rules governing the status of unwed mothers and fathers, in the early 20th century, the State Department allowed citizen mothers to transmit citizenship to their out-of-wedlock children; citizen fathers could not transmit citizenship to their out-of-wedlock children without legitimating them. *See To Revise and Codify the Nationality Laws of the United States into a Comprehensive Nationality Code: Hearings before the House Comm. on Immigration and Naturalization on H.R. 6127, superseded by H.R. 9980,* 76th Cong. 431

[15] In 1934, a provision was adopted that permitted transmission of citizenship by *either* a citizen mother or father to a child born abroad. Act to Amend the Law Relative to Citizenship and Naturalization, ch. 344, 48 Stat. 797 (1934); 39 Op. Atty. Gen. 397, 398 (1939). The provision was silent as to whether the transmission of citizenship by either parent could extend to out-of-wedlock children. The enactment of this provision raised doubts as to the citizenship of children born abroad to unwed citizen mothers prior to the date on which the 1934 Act became effective. *See* 39 Op. Atty. Gen. at 398. These questions were resolved by the 1940 Nationality Act, which codified the discriminatory treatment of mothers and fathers as to their ability to transmit citizenship to out-of-wedlock children.

(1940) (1945 reprint) [hereinafter *1940 Hearings*] (Proposed Code with Explanatory Comments).[16]

What may appear at first to be the superior "right" of an unwed mother to transmit citizenship to her child was really the correlate of her sole responsibility, under common law, for an out-of-wedlock child. The unwed father – having no responsibility toward his out-of-wedlock child under common law unless he legitimated the child – similarly did not convey citizenship to the child absent legitimation.

The gender-based distinctions in § 1409 – recognized by the State Department since at least 1912 and first codified in 1940 – are based on this discriminatory framework. The Nationality Act of 1940 ("1940 Act") was a comprehensive codification and revision of all existing immigration, naturalization, and citizenship laws and administrative practices.[17] The legislative history of § 205 of the 1940 Act, the predecessor of § 1409, while not extensive, does not indicate that the different treatment of unwed citizen fathers and mothers was based on any of the justifications currently offered for this provision. Rather, it was based on the constructs of the common law, and even

[16] *See also Collins, supra*, at 1688-93 and sources cited.

[17] President Roosevelt appointed a Committee of Advisors comprised of members of the Department of State, Department of Labor, and the Attorney General's Office [hereinafter Committee of Advisors] "to study the existing laws governing nationality, and to prepare a draft code embodying such changes and additions as might seem desirable, together with a report explaining the issues." *1940 Hearings* at 235 (Message to the President of the United States from Secretary of State Cordell Hull, Attorney General Homer Cummings, and Secretary of Labor Frances Perkins) [hereinafter Message to the President]. That Committee prepared a codification proposal with extended commentary [hereinafter Proposed Code] which was presented to the President and was transmitted to the Congress by the President on June 13, 1938. *See id.*

earlier traditions, that defined distinct roles and responsibilities for men and women with respect to their out-of-wedlock children.

In the comments submitted with the Proposed Code regarding § 205 of the 1940 Act, the Committee of Advisors' position on the transmission of citizenship to foreign-born children through the unwed citizen mother was justified as follows:

> [I]t may be said that the Department of State has, at least since 1912, uniformly held that an illegitimate child born abroad of an American mother acquires at birth the nationality of the mother, in the absence of legitimation or adjudication establishing the paternity of the child. This ruling is based upon section 1993 of the Revised Statutes, that section being construed to apply to an illegitimate child born abroad of an American mother, on the ground that the mother in such a case stands in the place of the father. . . . [U]nder American law the mother "has a right to the custody and control of such a child as against the putative father, and is bound to maintain it as its natural guardian." This rule seems to be in accord with the old Roman law and with the laws of Spain and France. So, in *Corpus Juris*, it is said: "the mother, as guardian by nature, has the right to the custody and control of her bastard child until it attains an age when it can, in contemplation of the law, make an election between father and mother."

1940 Hearings at 431 (Proposed Code with Explanatory Comments) (citations omitted). In connection with § 205 of the 1940 Act, there was no discussion of any

justification other than traditional rules defining the different responsibilities and rights of unwed mothers and fathers.[18]

As ultimately enacted, § 205 of the 1940 Act, ch. 876, 54 Stat. 1137, 1139-40 (1940), provided that nonmarital children born abroad would derive citizenship from their father if they were legitimated, generally under the local law of the place of birth. In the absence of legitimation, the child would inherit citizenship from the mother if she were a citizen at the time of the child's birth and had previously resided in the United States.

The 1940 provisions thus reinforced the gender-based assignment of rights and responsibilities for out-of-wedlock children. Those gender-based common law principles have been abandoned in state law; noncustodial parents, fathers and mothers, now have equal responsibilities to provide child support to their children. *See, e.g.*, Tex. Fam. Code Ann. § 154.001 (1996); N.Y. Fam. Ct. Act § 413 (1999); Cal. Fam. Code § 3900 (1994); Conn. Gen. Stat. Ann. § 46b-84 (1995); Del. Code Ann. tit. 13 § 501 (1999); Fla. Stat. ch. 61.13 (1997); Ariz. Rev. Stat. § 25-501 (1999); Mass. Gen. Laws Ann. ch. 208 § 28 (1998). But these discredited common law stereotypes became embedded in the law governing the citizenship of out-of-wedlock children.

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[18] In relation to different provisions of the 1940 Act, but not § 205, concerns about the ties between the United States and children born abroad whose fathers were nationals of those countries were expressed. *See* Section III.C., *infra*.

B. The 1986 Amendments to § 1409 Were Intended to Maintain the Discriminatory Common Law Framework and Make It Easier to Administer.

The substance of the provision that is now § 1409(a) remained largely unchanged from 1940 to 1986.[19] The 1986 amendments made procedural changes in the way fathers could convey citizenship to their out-of-wedlock children, but Congress accepted as a given that the rules for fathers and mothers would be different, as they had been under common law and the original 1940 version of the provision.

An examination of the legislative history reveals that, when Congress amended the Immigration and Nationality Act ("INA") in 1986, at the request of the State Department, the primary purpose was to promote more efficient administration of the statute. *Administration of the Immigration and Nationality Laws: Hearings on H.R. 4827, H.R. 4444, and H.R. 2184 Before the Subcomm. on Immigration, Refugees, and Int'l Law of the House Comm. on the Judiciary*, 99th Cong. 131 (1987) [hereinafter *1986 Hearings*] (statement of Joan Clark, Assistant Secretary of State for Consular Affairs) ("The provisions of this bill [we]re designed to streamline procedures and reduce the paperwork required to deliver consular services."). While there were extensive hearings

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[19] In its briefs below, the Government confirms that "Section 205 of the Nationality Act of 1940 was the substantively identical predecessor of [Section 1409(a)]." Respondent's Br. at 32. In 1952, the provision of former Section 205 that permitted unwed citizen mothers to transmit citizenship to their foreign-born children only if they had not been legitimated or their paternity established was eliminated and § 205 of the 1940 Act was recodified as § 1409. Section 1409 was not amended again until 1981, when § 1409's references to § 1401 were made to conform to the renumbering of that section.

on H.R. 4444 along with H.R. 4827, 2184, and other measures designed to improve the administration of the INA, Assistant Secretary Clark's written statement in support of the § 1409 changes contains the only substantive discussion about them. Her statement describes the purposes of these changes as follows:

> Section 13(b) [of the proposed amendment] amends section 309(a) of the Act to permit an illegitimate child of an American citizen father to acquire U.S. citizenship based on the father's formal written acknowledgment of paternity, or a court adjudication of paternity. This proposal would simplify and facilitate determinations of acquisition of citizenship by children born out of wedlock, to an American citizen father, by eliminating the necessity of determining the father's residence or domicile and establishing satisfaction of the legitimation provisions of the jurisdiction. To deter fraudulent claims, however, the fact that a blood relationship exists between the U.S. citizen father and the child would have to be shown by clear and convincing evidence. Moreover, the child's father, if living, must agree to provide for the child's financial support. The purpose of this clause is to facilitate the enforcement of a child support order and, thus, lessen the chance that the child could become a financial burden to the states.

1986 Hearings at 150. Assistant Secretary Clark's statement was incorporated into the record, and the Subcommittee on Immigration, Refugees and International Law – and later the full Judiciary Committee – recommended passage of the Department's proposed

changes to § 1409 *in toto,* without further discussion. *See* H.R. Rep. No. 99-916 (1986).

It thus appears from this scant legislative history of the specific changes to § 1409 that the State Department proposed, and Congress agreed, to maintain the basic gender-based framework of the provision, but wanted to provide a simpler alternative to the legitimation requirement, which required consular knowledge of the complex and varied rules concerning legitimation in different jurisdictions. Under the State Department's proposal, which became § 1409(a)(4), the requirement could be satisfied by acknowledging paternity in writing under oath while a child was under 18, as well as by legitimation or adjudication of paternity.

To ensure that this new way of satisfying the legitimation requirement would not lead to fraudulent claims, however, the State Department proposed adding a requirement, which became § 1409(a)(1), that the biological relationship between the father and child be proved by clear and convincing evidence. There is no discussion in the legislative history of what purpose would be served by maintaining a requirement that unwed fathers acknowledge, legitimate, or secure a court determination of the paternity of their children once a demonstration of the relationship by "clear and convincing evidence" was required. *See* Section IV.B, *infra*. The Department also proposed adding a requirement, which became § 1409(a)(3), requiring an unwed father to sign a statement agreeing to support the child until age 18 to lessen the chance that the child would become a public charge. *See* Section IV.A, *infra*. There is no legislative history indicating a basis for concern about the out-of-wedlock children of citizen fathers, but not those of citizen mothers, becoming a public charge since common law distinctions between the child support responsibilities of fathers and

mothers for their out-of-wedlock children had been eliminated, and a duty of both parents to support established, *see* Section II.A, *supra*. Finally, there is nothing in the legislative history of the changes to § 1409 indicating that there was any interest by the State Department or the Congress in promoting relationships between unwed citizen fathers and their foreign-born children or between those children and the United States. Thus, the persistent gender-based approach to pursuing these objectives is simply based on the outmoded stereotypes of the common law.

C. The Purported Objectives of Encouraging Relationships Between Father and Child, and Between the Child and the United States, Are Post-Hoc Rationalizations.

The Government has presented several justifications for the discriminatory provisions of § 1409. The objectives of preventing fraud and preventing a child from becoming a public charge are mentioned in the legislative history; however, the gender-based approach taken in these statutory provisions is rooted in common law stereotypes, *see* Sections II and III.A, *supra*, and is not substantially related to achieving these objectives, *see* Section IV, *infra*. Moreover, the purported objectives of encouraging relationships between fathers and children, and between children and the United States appear to have been "invented post hoc in response to litigation." *VMI* at 533.

In this case, in its brief below, the Government has referred generally to the history of the 1940 Act in an effort to justify § 1409 as designed to promote "close family ties" and to prevent "complete strangers to the United States becoming citizens by virtue of their parentage." Respondent's Br. at 32. However, nowhere in the legislative history of the 1940 Act is this concern expressed in relation to § 205, the predecessor of § 1409.

In drafting the proposed code, the Committee of Advisors generally recognized the possibility that "persons born in foreign countries whose fathers were nationals of those countries would be likely to have stronger ties with the foreign country than with the United States." *1940 Hearings* at 237. However, this concern was addressed directly by § 201(g) of the 1940 Act, which imposed, as a condition of retaining citizenship, a requirement that children reside in the United States for a period of time. *Id.*[20]

Similarly, the legislative history of the 1986 amendments to § 1409 makes no mention of the goal of promoting an on-going relationship between unwed fathers and their foreign-born children. Reference to this goal is made in relation to a different provision of the INA that is unrelated to § 1409. In seeking a change to § 101 of the Act, a representative of the Immigration and Naturalization Service explicitly stated that the establishment of an on-going relationship between a father and his child was of concern in determining which children should be eligible to receive immigrant visas, which are limited in number. *See 1986 Hearings* at 120 (statement of Richard E. Norton, Associate Commissioner, Examinations, U.S. Immigration and Naturalization Service) ("where no relationship other than the biological one exists, we perceive no cause to provide a benefit not demanded by normal considerations of family reunification."). In contrast to immigrant visas for noncitizens, there is no limitation on the number of individuals for whom citizenship may be transmitted under § 1409.

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[20] This requirement was repealed in 1978. Pub. L. No. 95-432 § 1, 92 Stat. 1046 (1978).

In sum, there is no indication in the legislative history that §§ 1409(a)(3) and (a)(4) were intended to promote healthy parent-child relationships or ties between the foreign-born and the United States. Therefore, while the promotion of such relationships may indeed apply as a justification to other sections of the INA, it is not a justification, much less an exceedingly persuasive justification, for the gender-based provisions of §§ 1409(a)(3) and (4).

IV. SECTIONS 1409(a)(3) AND (a)(4) ARE NOT SUBSTANTIALLY RELATED TO THE ASSERTED GOVERNMENT OBJECTIVES OF ENSURING THAT A FOREIGN-BORN, OUT-OF-WEDLOCK CHILD DOES NOT BECOME A PUBLIC CHARGE OR DETERRING FRAUDULENT CLAIMS OF PATERNITY.

The Government and the court below assert two additional objectives for the gender-based requirements of §§ 1409(a)(3) and (a)(4), both of which have some support in the legislative history. The first objective is to secure child support for a foreign-born, out-of-wedlock child to ensure that the child does not become a public charge, and the second is to deter fraudulent claims of paternity that wrongfully confer citizenship. Sections 1409(a)(3) and (a)(4) are not substantially related to either of these objectives.

A. Sections 1409(a)(3) and (a)(4) Are Not Substantially Related to the Governmental Objective of Ensuring that a Foreign-Born, Out-of-Wedlock Child Does Not Become a Public Charge.

The laws of all the states establish procedures under which either custodial mothers or fathers, on a gender-

neutral basis, may seek legally enforceable support from the noncustodial parents of their out-of-wedlock children.[21] Sections 1409(a)(3) and (a)(4) are insufficiently related to securing legally enforceable support under these laws to provide any meaningful protection against a child's becoming a public charge. Moreover, there is no valid basis for assuming that the children of unwed citizen fathers but not mothers need support to keep them from becoming a public charge. *See* Section II, *supra*.

Under the laws of all the states, the first step in securing legally enforceable support for a child born out-of-wedlock is to establish paternity, which can be done through a court or agency determination, *see* 42 U.S.C. §§ 654(20)(A), 666(a)(5)(A), or by a written statement under oath that is signed by both the child's father and the child's mother, *see* 42 U.S.C. §§ 666(a)(5)(C) & (D)(ii), (iii); U.S. Department of Health and Human Services, Office of Child Support Enforcement, A.T. 98-02, *available at* http://www.acf.dhss.gov/programs/cse/pol/at-9802.htm. If a mother or putative father does not wish to acknowledge paternity voluntarily, the use of genetic

[21] Section 402(a)(2) of the Social Security Act, 42 U.S.C. § 602(a)(2), requires states, as a condition of receiving federal funding under the Temporary Assistance to Needy Families program, to establish a program that complies with Title IV-D of the Act, 42 U.S.C. § 654 *et seq.*, under which individuals may obtain assistance, on a gender-neutral basis, in establishing paternity and enforcing child support. All of the states have IV-D programs, which are administered by the states but whose major design features, including specific procedures for establishing and enforcing support that must be included in state law, 42 U.S.C. § 666, are dictated by the federal government. *See 1996 Green Book: Background Material and Data on Programs Within the Jurisdiction of the Comm. on Ways and Means*, House Comm. on Ways and Means, 104th Cong. 530 (1996). *See also* Section II.A, *supra* (states have abandoned the common law's gender-based assignment of support obligations).

testing is encouraged,[22] and the results of genetic testing are treated as a rebuttable or conclusive – depending on the state – presumption of paternity. *See* 42 U.S.C. § 666(a)(5)(G). A custodial parent may obtain an order for temporary support from the other parent, pending an administrative or judicial determination of parentage, if there is "clear and convincing evidence of paternity." *See* 42 U.S.C. § 666(a)(5)(J). Once paternity has been administratively or judicially determined, a custodial parent may seek a permanent order of child support from the other parent, which must be expressed in a specific numeric amount. *See* 42 U.S.C. § 667; 45 C.F.R. § 302.56(c)(2). Once entered, this order may be enforced through wage withholding, the imposition of liens, and other remedies such as driver's license revocation. *See* 42 U.S.C. §§ 666(a)(1) & (b), (a)(4), (a)(16).

Section 1409(a)(3) merely requires a father to agree in writing to support his child until age 18. For this agreement to be converted into a legally enforceable support obligation, it would have to be incorporated into an administrative or court order that includes a specified amount of support, numerically expressed, and otherwise meets the requirements of the law of the state in which support is being sought.[23] Only at that point could the resulting order be enforced by wage withholding, contempt or other remedies available to compel nonpayment of support. In short, an individual or governmental agency

[22] In a contested case, genetic testing must be available at the request of either party. *See* 42 U.S.C. § 666(a)(5)(B)(i).

[23] It is clear from the INS affidavit required of citizen fathers of foreign-born, out-of-wedlock children that no numeric amount of support is included. *See* U.S. Department of State, *Affidavit of Parentage and Physical Presence*, *available at* http://travel.state.gov/physpres.html (last visited Nov. 9, 2000). It is equally clear that it does not constitute an administrative or court order of support. *See id.*

seeking to secure the support promised under the agreement required by § 1409(a)(3) would have to proceed essentially no differently than if § 1409(a)(3) did not exist.

Section 1409(a)(4) does not make it any easier to secure legally enforceable child support. It is satisfied simply by a father's acknowledgment of paternity in writing under oath.[24] For this acknowledgment to be converted into a voluntary acknowledgment of paternity valid under state law, the mother would have to agree that the individual in question is the child's father and add her signature to that of the father's. Absent her signature, an administrative or court order of paternity would be necessary to secure a child support order.

Clearly, neither § 1409(a)(3) nor (a)(4) is substantially related to the governmental objective of securing the support necessary to prevent a child from become a public charge. Moreover, §§ 1409(a)(3) and (a)(4) are superfluous, because § 1409(a)(1) provides a much more effective way of securing legally enforceable support. The mere establishment under § 1409(a)(1) of a blood relationship between an unwed citizen father and the child by clear and convincing evidence is a sufficient basis for obtaining a temporary, enforceable child support order in all the states. *See* 42 U.S.C. § 666(a)(5)(J). Furthermore, it is easy to establish clear and convincing evidence of paternity by genetic testing using DNA

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[24] There are three ways to meet § 1409(a)(4)'s requirements: legitimation under the law of the child's domicile or residence, adjudication of the child's paternity by a competent court, or acknowledgment of the child's paternity by the father in writing under oath. Since the language is disjunctive, a father can meet § 1409(a)(1)'s requirement simply by written acknowledgment.

analysis.[25] A genetic test also can create a rebuttable or conclusive presumption of paternity, depending on the state, upon which paternity can be established definitively in a court or administrative proceeding, *see* 42 U.S.C. § 666(a)(5)(G), allowing a permanent child support order to be entered.

B. Sections 1409(a)(3) and (a)(4) Are Not Substantially Related to the Governmental Objective of Deterring Fraud.

Because §§ 1409(a)(3) and (4) are insufficiently related to securing legally enforceable support, they also do not provide any meaningful deterrent to the assertion of false claims of paternity. A putative father who incurs no enforceable financial obligation is not likely to be deterred from asserting that he is the father of a child in order to confer citizenship.

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[25] Paternity can be determined by a DNA test with 99.99 percent certainty. *See* E. Donald Shapiro et al., *The DNA Paternity Test: Legislating the Future Paternity Action*, 7 J.L. & Health 1, 29 (1992-1993); U.S. Department of Health and Human Services, Office of the Inspector General, *Paternity Establishment: State Use of Genetic Testing* 1 (September 1999) [hereinafter *Paternity Establishment*]. Recent developments in technology have made genetic tests relatively inexpensive as well as minimally physically intrusive and widely available. *See* Aviam Soifer & Miriam Wugmeister, *Mapping and Matching DNA: Several Legal Complications of "Accurate" Classifications*, 22 Hastings Const. L.Q. 1, 22 (1994). While earlier DNA profiling required blood testing, today buccal (mouth or cheek cavity) swabs are an alternative to drawing blood for testing. *See Paternity Establishment* at 9. Genetic testing "can be an extremely valuable tool in cases when it otherwise would be impossible to verify a relationship." *INS Memorandum on DNA Testing to Establish Family Relationships* 2 (July 14, 2000), *available at* http://www.immigrationlinks.com/news/news 413.htm. Of course the fact that a genetic test readily provides clear and convincing evidence of a biological relationship between a parent and his child does not mean that such a test is the only way to show the biological tie.

Indeed, it was for this reason that the State Department proposed, and Congress included in the statute, § 1409(a)(1)'s requirement that a father prove a blood relationship to the child by clear and convincing evidence. *See* Section II.B, *supra*. This legislative history of §1409 confirms that § 1409(a)(1), not § 1409 (a)(3) or (a)(4), was expressly intended to deter fraud. Moreover, with readily available DNA testing, which can be performed at any time, the additional requirement under §§ 1409(a)(3) and (4) that action be taken before the child is 18 and evidence becomes stale is not necessary to prevent fraudulent claims of paternity. *See* note 25, *supra*. In sum, because §§ 1409(a)(3) and (4)'s gender-based requirements are insufficiently related to the governmental objectives of preventing out-of-wedlock children from becoming a public charge or deterring fraudulent claims of paternity to confer citizenship, as well as superfluous to §§ 1409(a)(1) in achieving those objectives, they cannot survive heightened scrutiny.

CONCLUSION

For the reasons set forth above, and in the Brief of the Petitioners, the decision below should be reversed.

Respectfully submitted,

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APPENDIX

Statements of Interest

National Women's Law Center

The National Women's Law Center ("Center") is a non-profit legal organization that has worked since 1972 to advance and protect women's rights. The Center focuses on major areas of importance to women and their families, including income security, employment, education, and reproductive rights and health -- with special attention to the needs of low-income women. The Center has provided assistance or participated as counsel or *amicus curiae* in a range of cases to secure the equal treatment of women under the law.

Association for Children for Enforcement of Support, Inc.

The Association for Children for Enforcement of Support, Inc. ("ACES") is a national non-profit child support advocacy group of parents whose children are entitled to support. ACES is committed to improving child support enforcement and assuring that child support issues are addressed in a fair and equitable manner.

Centers on Fathers, Families and Public Policy

The Center on Fathers, Families and Public Policy ("CFFPP") is a nationally-focused, non-profit, public policy organization that specializes in policy research, technical assistance, training and public education in order to focus attention on the barriers faced by never-married, low-income fathers and their families. CFFPP was established in 1995, and has tax-exempt status under federal and state laws. CFFPP has a strong interest in upholding equal rights for all members of society.

Equal Rights Advocates

Equal Rights Advocates ("ERA") is one of the oldest public interest law firms specializing in litigation and advocacy efforts to eliminate gender discrimination and secure equal rights. ERA has a long history of interest, activism, and advocacy in many areas of the law that affect equality between the sexes, including pay equity, sexual harassment in the workplace and schools, pregnancy discrimination, and affirmative action. ERA's work includes issues affecting immigrant women in the workplace, as well as under state and federal public benefit programs.

Harriet Buhai Center for Family Law

The Harriet Buhai Center for Family Law ("Buhai Center") is a non-profit legal aid agency serving low-income persons in Los Angeles County. The Buhai Center provides family law and domestic violence assistance to over 1,000 indigent adults and several thousand of their children each year, primarily in the areas of custody, visitation, child support, domestic violence, divorce and paternity establishment. The Buhai Center's work includes representation of the interests of individuals seeking citizenship who are directly affected by the provisions of 8 U.S.C. § 1409.

National Center on Poverty Law

The National Center on Poverty Law ("Center on Poverty Law") is a non-profit public interest law firm whose mission is to provide leadership in identifying, developing and supporting creative and collaborative approaches to achieving social and economic justice for low-income people. The Center on Poverty Law represents low-income people on welfare, workforce, housing and community development issues and manages communication and knowledge services on poverty law and policy. The Center on Poverty Law has a long history in Illinois and the rest of the country of challenging the unequal treatment of the children of unmarried parents as well as the discrimination and other barriers that low-income, unmarried fathers face in their attempts to support and nurture their children.

National Partnership for Women & Families

The National Partnership for Women & Families ("National Partnership") is a national advocacy organization that develops and promotes policies to help women achieve equal opportunity, quality health care, and economic security for themselves and their families. Since its founding in 1971, the National Partnership (formerly the Women's Legal Defense Fund) has worked to advance equal protection under law on the basis of gender through litigation of significant cases, public education, and advocacy.

Northwest Women's Law Center

The Northwest Women's Law Center ("NWLC") is a non-profit public interest organization that works to advance the legal rights of all women through litigation, education, legislation and the provision of legal information and referral services. Since its founding in 1978, the NWLC has been dedicated to protecting and expanding women's civil rights and securing gender equality. Toward this end, the NWLC has participated as counsel and as *amicus curiae* in cases throughout the Northwest and the country, to ensure that women and men have the ability to participate equally in all aspects of life.

Texas Civil Rights Project

The Texas Civil Rights Project ("TCRP"), founded in 1990, is a non-profit public interest law organization that promotes racial, economic, and social justice, as well as civil

liberties under the Bill of Rights of the Texas and United States Constitutions. TCRP works to ensure that individuals' civil rights and civil liberties under the state and federal constitutions are not abridged or modified, whether through legislation, improper enforcement or judicial action.

Women's Law Project

The Women's Law Project ("Law Project") is a Philadelphia-based public interest organization dedicated to challenging gender discrimination and securing equal rights for women and men through litigation, public policy development, public education and individual counseling. Since its founding in 1974, the Law Project has vigorously advocated for gender equity in a wide variety of areas, including employment, education, insurance, and family law under state and federal constitutional and statutory guarantees of equal treatment.

Women Lawyers Association of Los Angeles

Women Lawyers Association of Los Angeles ("WLALA") is a non-profit organization comprised primarily of attorneys and judges in Los Angeles County. Founded in 1919, WLALA is dedicated to promoting the full participation of women lawyers and judges in the legal profession, maintaining the integrity of our legal system by advocating principles of fairness and equality, and improving the status of women in our society. To further these goals, WLALA has joined *amicus* briefs in cases before this Court having a significant impact on women's rights, including challenges to laws founded on overbroad generalizations about the differential talents, capacities, or preferences of males and females.